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RESOLUTION OF THE CITY OF MILPITAS
TO SUPPORT PRINCIPLES OF PRODUCT STEWARDSHIP FOR
ELECTRONICS MANUFACTURERS AND TO SUPPORT LEGISLATION
REQUIRING PRODUCER RESPONSIBILITY FOR CATHODE RAY TUBES

WHEREAS, the California Department of Toxic Substances Control has recently affirmed that products containing cathode ray tubes (CRT), such as those found in televisions and computer monitors, are hazardous materials; and

WHEREAS, CRTs are prohibited from disposal at municipal landfills, and electronic products contain lead, cadmium, mercury, hexavalent chromium, polyvinyl chloride, brominated flame retardant and other materials that can pose hazards to human health and the environment when handled improperly; and

WHEREAS, responsible management of electronic discards is an increasing problem, with more than 6,000 computers becoming obsolete in California every day, and 3.2 million tons of electronic waste ending up in United States landfills in 1997; and

WHEREAS, Only 14% of personal computers that became obsolete in 1998 were recycled or refurbished; and

WHEREAS, in the interest of long-term economic health, resource sustainability, environmental protection, public health and safety, and limiting government's future liability, it is desirable to support efforts that extend manufacturer responsibility for goods and products to include their final disposition; and

WHEREAS, extended producer responsibility principles will shift the defaulted burden of disposal responsibility from government, ratepayers and taxpayers back to the manufacturers, distributors and consumers of such products, where it properly belongs, in part by internalizing lifecycle costs in the price of such products; and

WHEREAS, the *Principles of Product Stewardship* have been developed by the Product Stewardship Institute to support state and local agencies in promoting product stewardship and developing voluntary agreements with industry and environmental groups to reduce the health and environmental impacts from consumer products.

NOW, THEREFORE, BE IT RESOLVED that the City of Milpitas hereby declares its support for the Principles of Product Stewardship, as outlined below and supports governmental and non-governmental organizations in the effort to develop voluntary agreements with industry and environmental groups to reduce the health and environmental impacts from electronic product discards; and be it

FURTHER RESOLVED, that to achieve this result, product stewardship efforts will encourage manufacturers to take increasing responsibility to reduce the entire life-cycle impacts of a product and its packaging in product design and in the end-of-life management of the products they produce, and be it

FURTHER RESOLVED, the responsibility for reducing product impacts should be shared among industry, government and consumers, with the degree of responsibility determined by the ability and opportunity of an entity to minimize those impacts, and be it

FURTHER RESOLVED, all product lifecycle costs should be internalized in the total product cost, including costs for end-of-life management. The environmental costs of product manufacture, use, and disposal should be minimized for local and state governments, and ultimately shifted to the manufacturers and consumers of products; and be it

FURTHER RESOLVED, policies that promote and implement product stewardship principles should create incentives for the manufacturer to design and produce "cleaner" products, which result in less waste and use less energy to operate. These policies should also create incentives for, and facilitate the recovery of, products at the end of their lives; and be it

FURTHER RESOLVED, flexible management strategies to determine how to most effectively address health and environmental impacts should be available to responsible parties; and be it

FURTHER RESOLVED, industry should provide leadership in realizing these principles. Government will provide leadership in promoting the practices of product stewardship through procurement, technical assistance, program evaluation, education, market development, agency coordination, and by addressing regulatory barriers and, where necessary, providing regulatory incentives and disincentives. Industry and government shall provide information needed to make responsible environmental purchasing, reuse, recycling, and disposal decisions; and be it

FURTHER RESOLVED, the City of Milpitas will urge its State Assembly Members and Senators to introduce and support legislation requiring computer and electronics producers to operate or fund comprehensive extended producer responsibility programs.

PASSED AND ADOPTED this 5th day of February, 2002, by the following vote:

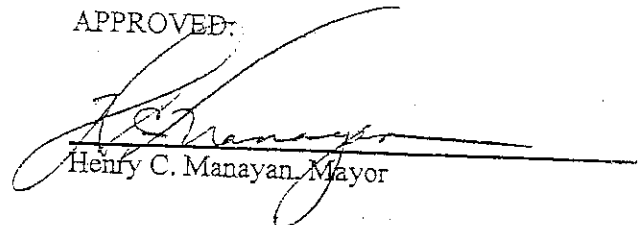
AYES:	(5)	Mayor Manayan and Councilmembers Livengood, Dixon, Esteves and Lawson
NOES:	(0)	None
ABSENT:	(0)	None
ABSTAIN:	(0)	None

ATTEST:



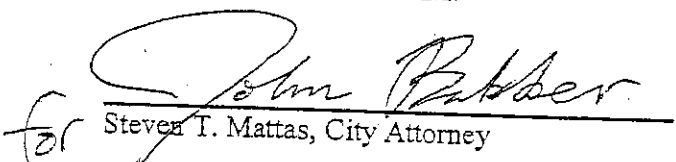
Gail Blalock, City Clerk

APPROVED:



Henry C. Manayan, Mayor

APPROVED AS TO FORM:



Steven T. Mattas, City Attorney

EXHIBIT B

CITY OF MILPITAS

POLICY RELATING TO
ENVIRONMENTALLY PREFERABLE PROCUREMENTBACKGROUND

The City of Milpitas is committed to conservation of resources and protection of the environment through effective planning and participation in programs to reduce, reuse, recycle, and dispose of discarded materials. By incorporating environmental considerations in public purchasing, the City of Milpitas can serve this commitment by reducing its burden on the local and global environment, removing unnecessary hazards from its operations, protecting public health, reducing costs and liabilities, and potentially improving the environmental quality of the region. This policy is an effective way to direct the City's effort in procuring environmentally preferable products and services.

PURPOSE

The primary purpose of this policy is to minimize negative environmental impacts of the City's activities by ensuring the procurement of services and products that:

- reduce toxicity;
- conserve natural resources, materials, and energy;
- maximize recyclability and recycled content.

A collateral purpose is to support markets for recycled goods and other environmentally preferable products and services.

DEFINITIONS

The following terms shall have the assigned definitions for all purposes under this policy:

- A. City of Milpitas means the City elected officials, staff, and agencies.
- B. Environmentally Preferable Products (EPP) and Services means products and services that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
- C. Life Cycle Cost means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.
- D. Practicable means sufficient in performance and available at a reasonable price.
- E. Recyclable Product means a product which, after its intended end use, can demonstrably be diverted from the City's solid waste stream for use as a raw material in the manufacture of another product.

- F. **Recycled Material** means material and byproducts that have been recovered or diverted from solid waste, and have been utilized in place of raw or virgin material in manufacturing a product. It is derived from post-consumer recycled material, manufacturing waste, industrial scrap, agricultural waste, and other waste material, but does not include material or byproducts generated from, and commonly reused within, an original manufacturing process.
- G. **Virgin Material** means any material occurring in its natural form. Virgin material is used in the form of raw material in the manufacture of new products.

POLICY

The City commits to:

1. Use its best efforts to procure environmentally preferable products and services where criteria have been established by governmental or other widely recognized authorities (e.g. Energy Star, EPA Eco Purchasing Guidelines).
2. Integrate environmental factors into buying decisions where external authorities have not established criteria. Examples:
 - Replacing disposables with reusables or recyclables;
 - Supporting eco-labeling practices by buying products bearing such labels in preference to others, where they are available and provide value;
 - Taking into account life cycle costs and benefits;
 - Evaluating, as appropriate, the environmental performance of vendors in providing products and services.
3. Raise staff awareness on environmental issues affecting procurement by providing relevant information and training.
4. Encourage suppliers and contractors to offer environmentally preferable products and services at competitive prices.
5. Encourage providers of services to consider environmental impacts of service delivery.
6. Comply with all environmental legislative and regulatory requirements in the procurement of products and services.

Nothing in this policy shall be construed as requiring a department, agency, or contractor to procure products that do not perform adequately for their intended use or are not available at a reasonable price in a reasonable period of time.

Procedures and Guidelines may be established, as necessary, to ensure the continuation of a strong Environmental Procurement Program.

RESPONSIBILITY

All City departments, offices, and agencies shall identify and purchase the most environmentally responsible products and services that are available for the intended purpose and that meet the performance requirements. Factors that should be considered when determining the environmentally preferable good or service include, but are not limited to:

- Minimization of virgin material use in product or service life cycle
 - Maximization of recycled products used in product or service life cycle
 - Environmental cost of entire product or service life cycle
 - Reuse of existing products or materials in product or service life cycle
 - Recyclability of product
 - Minimization of packaging
 - Reduction of energy/water consumption
 - Toxicity reduction or elimination
 - Elimination of uncertified hardwoods in product or service life cycle
 - Durability and maintenance requirements
 - Ultimate disposal of the product
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Purchasing Division Responsibilities:

1. Develop and maintain information about environmentally preferable products and recycled products containing the maximum practicable amount of recycled materials to be purchased by departments, agencies, consultants, and contractors whenever possible.
2. Inform departments, agencies, and contractors of their responsibilities under this policy and provide implementation assistance.
3. Institute product testing and trial service to evaluate environmentally responsible alternatives.
4. Require the use of recycled materials and recycled products by incorporating them in bid specifications where practicable.
5. Disseminate information on recycled and environmentally preferable product procurement requirements, specifications, and performance to assist vendors with procurement opportunities with the City.
6. Evaluate the procurement of selected materials based on considerations of recycling, energy and water conservation, life cycle costing, and other environmental considerations.
7. Help establish and promote needed environmental procurement legislation.

Engineering Division Responsibilities (and/or other support department):

1. Support Purchasing in its implementation of this policy by providing training, information when requested, and assistance in the evaluation of the EPP status of a product or service.
2. Support departments and agencies in evaluation and analysis of products and services for EPP criteria.

Department and Agency Responsibilities:

1. Evaluate products and services to determine the extent to which the specifications could include an environmentally preferable option.
2. Ensure that contracts issued by departments and agencies include environmentally preferable products and recycled products wherever practicable.
3. Expand the awareness and use of environmentally preferable products.

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EXHIBIT C
CITY OF MILPITAS
MEMORANDUM

DATE: December 17, 2001

TO: Mike McNeely, City Engineer

FROM: Darryl Wong, Utility Engineer
Barbara Daniels, Administrative Analyst II

SUBJECT: Recommendation on Environmentally Preferable Procurement Policy
And Product Stewardship Institute

Recommendation

Recommend support for a Environmentally Preferable Procurement Policy

Background

The City Council received a recommendation from the County's Recycling and Waste Reduction Commission for consideration of an Environmentally Preferable Procurement Policy (EPP) and/or guidelines, and membership in the Product Stewardship Institute.

This recommendation is the result of the Commission's discussions on electronic waste disposal and recycling issues. The California Environmental Protection Agency has determined that cathode ray tubes (CRTs) found in most televisions and computer monitors are hazardous waste and can no longer be disposed in municipal landfills. These products contain hazardous substances such as lead, cadmium, mercury and hexavalent chromium.

The Product Stewardship Institute (PSI) is a national organization created to coordinate state and local governments in developing a policy approach to product stewardship. The PSI has initiated a national effort to assist governments in establishing cooperative agreements with industry to increase manufacturer responsibility for electronic products throughout all stages of the product's life cycle. Membership in the PSI is at no cost, but, requires adoption of the Principles of Product Stewardship. The principles' management strategy requires that whoever designs, produces, sells, or uses a product takes responsibility for minimizing the product's environmental impact throughout all stages of the product's life cycle, including end of life management.

Councilman Jose Esteves, representative on the Recycling and Waste Reduction Commission of Santa Clara County, requested a recommendation from staff regarding adoption of the policy.

Discussion

The EEP Policy purpose is to reduce negative environmental impacts from services and products procured by agencies in order to reduce toxicity, conserve natural resources and encourage recycling of materials. Criteria established by environmental authorities would be used to guide procurement. The policy does not require agencies to procure products or services that do not perform adequately for the intended use or not available at a reasonable price or reasonable period of time. The EPP policy requires the city procurement agent to identify and purchase

environmentally responsible products and services when possible, and to inform departments with information regarding such products.

A possible adverse impact of membership in the Product Stewardship Institute could be a requirement for staff to attend coordination meetings. The exact amount of time required is undetermined.

The city currently implements the following practices:

- ◆ The City Purchasing Code (Title 1, Administration, Chapter 2- Purchasing) allows for a preference to suppliers of recycled paper or paper products equal to five percent of the lowest bid price. Approximately 80% of the paper purchased by the City is manufactured of 20-30% recycled content materials.
- ◆ The City Fleet Maintenance division practices reuse including the purchase re-refined oil for city vehicles and a recycled mat material for use on the shop floor.
- ◆ The Parks division purchases playground equipment (benches and playground apparatus) constructed of recycled plastic products. And,
- ◆ Recycled toner cartridges are purchased for printers and copiers.

The Purchasing Agent reviewed the recommended model procurement policy and resolution along with the California Environmental Protection Agency (EPA) - Procurement Guidelines and saw no adverse fiscal impacts for the City based on current practices.

Recommendation

Recommend support for an EPP Policy/Guidelines and support of the Principles of Product Stewardship for the following reasons:

1. The policy is consistent with city practices. The City currently supports the purchase and use of recycled products and the use of recycled content products.
2. The City's Source Reduction and Recycling Element, (required by AB939), has as one of its tools in reaching and maintaining 50% diversion, a Procurement Policy that encourages recycled content purchases.
3. Federal Executive Order 13101 states that any Federal Agency or recipient of Federal funds that spends at least \$10,000 annually on any commodity on the Environmental Protection Agency's list of recycled items must purchase a minimum of 25 to 50% of such commodities with specified minimum recycled content.

C: Emma Karlen, Finance Director
 Gail Blalock, City Clerk
 Lou Zenzen, Purchasing Agent
 Grant Corrigan, Fleet Maintenance Supervisor

Title I - ADMINISTRATION

Chapter 2 - PURCHASING

• **I-2-3.15 - Recycled Product Procurement**

3.15-1 The City of Milpitas is committed to the conservation and protection of state and local resources; therefore bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to or better than that of non-recycled products.

- (a) The City shall require all businesses doing business with the City to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products or supplies offered or sold to the City. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.
- (b) With respect to printer or duplication cartridges, a certification from the vendor is required to specify that the cartridges are remanufactured and are in compliance with the requirements of Section 12156 (e) of the Public Contract Code.
- (c) The City shall require contractors and consultants to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.
- (d) The City shall ensure that they and their contractors use recycled paper in printed material that bears an imprint identifying the recycled content of the paper, whenever practicable.
- (e) The City shall ensure that they and their contractors use both sides of paper sheets whenever practicable.
- (f) To the extent possible, the recycled product preference cost shall apply to the bids where the City has made multiple awards, so as to maximize the dollar participation of firms offering recycled products.
- (g) All printing contracts made by the City shall specify that the paper used shall meet the recycled content requirement of thirty percent (30%) postconsumer fiber as specified in Section 12209 of the Public Contract Code.
- (h) The City may specify recycled content at levels higher than the minimum content standards.

3.15-2 The Purchasing Agent Shall:

- (a) Maintain a list of designated recycled products that contain the maximum practicable amount of recovered material and are consistent with State and Federal guidelines and shall coordinate with all departments to purchase environmentally preferable products whenever practicable.
- (b) Grant the supplier of recycled products a preference of ten percent (10%) based on the bid or price quoted by supplier of recycled products when determining the lowest responsive and responsible bidder.
- (c) Inform Departments of processes and procedures that are environmentally preferable in order to facilitate their evaluation and use by the Departments whenever practicable.
- (d) Monitor contracting procedures to ensure that they do not discriminate against recycled products without justification, and that they maximize the specification of designated recycled products whenever practicable.

(Ord. No. 23.12, § 2, 5-5-09; Ord. 23.10 (part), 1/3/06)

Christopher Schroeder**EXHIBIT E**

From: Wang, Cynthia [cwang@meyersnave.com]
Sent: Friday, December 08, 2006 3:20 PM
To: Christopher Schroeder
Subject: Post-consumer recycled products use requirement

My name is Cynthia Wang and I work with Richard Pio Roda on matters related to the City of Milpitas. Rich asked me to research the applicability of the Post Consumer Recycled Products Use Requirement to the City's public works projects. You will find my legal analysis below.

The Milpitas Purchasing Ordinance (MMC Section I-2-3.15) requires the Purchasing Agent to purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to that of nonrecycled products.

However, the California Public Contracts Code has a much stronger requirement, suggesting that **all** local government entities should adhere to the recycled products use requirement, including public works. Pub. Contract Code Section 12201 provides:

[the] Legislature further finds and declares that the use of recycled products proceed as a result of the superior waste management efforts by the state and **local government entities** will **help** conserve resources. It is the intent of the Legislature that the state pursue **all feasible measures** to improve markets for recycled products . . . If fitness and quality are equal, **each state agency shall purchase recycled products**.

Therefore, State law provides no distinction between purchasing by the City's purchasing manager and the public works department. The Public Contracts Code clearly states the legislature's intent to promote the use of recycled products by compelling state agencies to purchase such products.

The public works department is as much an agency of the City as the purchasing department. As such, the public works department must comply with the Post Consumer Recycled Products Use Requirement (Pub. Contracts Code Section 12200 et. seq) and it shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to that of nonrecycled products.

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